

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§	Confirmation No.:	6900
GREENE	§		
MIERZWA	§	Group Art Unit:	3624
ABUKHATER	§		
SIEVERT	§	Examiner:	Stefanos KARMIS
	§		
Serial No.: 09/802,701	§	Atty. Dkt. No:	1991-00100
	§		
Filed: March 9, 2001	§		
	§		
For: Online Trading System Having	§		
Real-Time Account Opening	§		

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

June 18, 2007

Sir or Madam:

In response to the final office action of January 24, 2007, Appellants file this Appeal Brief.

A Notice of Appeal was filed on April 20, 2007.

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I. REAL PARTY IN INTEREST

The real party in interest is the Assignee: E*Trade Group, Inc.

II. RELATED APPEALS AND INTERFERENCES

Neither the Appellants, the Appellants' legal representative, nor the Assignee know of any other appeals or interferences that will directly affect, be directly affected by, or have a bearing on the Board's decision of this appeal.

III. STATUS OF CLAIMS

The status of the claims is as follows:

Originally filed claims:	1-18
Canceled claims:	6-7, 15
Allowed claims:	None
Currently rejected claims:	1-5, 8-14, and 16-18
Presently appealed claims:	1-5, 8-14, and 16-18

IV. STATUS OF AMENDMENTS

No amendment was filed subsequent to the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

This section provides a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number or to the drawings by reference characters pursuant to 37 C.F.R. § 41.37(c)(1)(v). Each element of the claims is identified with a corresponding reference to the specification or drawings. Note that the citation to passages in the specification or drawings for each claim element does not mean or imply that the claims are limited to the structure or embodiments referenced herein, or that the limitations from the specification and drawings should be read into the corresponding claim element.

Claim 1 recites a method of securing an ownership interest in a publicly traded corporation (p.7 ¶.4) that includes receiving a request to open a brokerage account (p.14 ¶.7; FIG.5 502); remotely providing account application information to an online brokerage (p.14 ¶.16–p.15 ¶.15; FIG.5 504, 510, 514, 516); electronically signing an account agreement authorizing the establishment of an online brokerage account with said online brokerage (p.16 ¶.25–27; FIG.5 530, 532); opening said online brokerage account (p.17 ¶.3–12); authorizing an online real-time transfer of investment funds to said online brokerage account (p.16 ¶.25–p.17 ¶.2; FIG.5 536); automatically initiating an online transfer of investment funds to said online brokerage account (p.17 ¶.3–12; FIG.5 536–544); using said online brokerage account to place an online real-time trading order using an abbreviation associated with said publicly traded corporation (p.17 ¶.21–23; FIG.6); and using said online brokerage account to complete an online real-time trading order (p.18 ¶.3–20; FIG.6).

Claim 8 recites an online trading system (p.7 ¶.4) that includes at least one computer coupled to a network and configured to maintain a brokerage account database (p.7 ¶.6–8; FIG.2 210); and at least one computer coupled to the network and configured to use a plurality of web page templates to service web page requests received over the network (p.7 ¶.4–6; FIG.2 212), wherein the web page templates are configured to implement a real-time account opening process that establishes new brokerage accounts in the brokerage account database (FIGS. 4–6), wherein the real-time account opening process includes receiving a request to open a brokerage account (p.14 ¶.7; FIG.5 502); obtaining contact information online (p.14 ¶.16–p.15 ¶.15; FIG.5 504, 510, 514, 516); creating a new record in the brokerage account database reflecting said contact

information (p.14 ¶.20–21); obtaining brokerage account application information (p.15 ¶.2–15); updating said new record in accordance with said brokerage account application information (p.15 ¶.6–8); displaying a brokerage account contract (p.15 ¶.19–p.16 ¶.24); securing online agreement to said brokerage account contract (p.16 ¶.25–27; FIG.5 530, 532); opening said brokerage account (p.17 ¶.3–12); obtaining funding information relating to a financial account (p.16 ¶.25–p.17 ¶.2; FIG.5 536); authorizing and automatically initiating a transfer of funds from said financial account into said brokerage account; updating said new record with a buying power greater than zero (p.17 ¶.5–7); using said brokerage account to place an online real-time trading order using an abbreviation associated with said publicly traded corporation (p.17 ¶.21–23; FIG.6); and using said brokerage account to complete an online real-time trading order (p.18 ¶.3–20; FIG.6).

Claim 16 recites an online trading system (p.7 ¶.4) that includes at least one computer coupled to a network and configured to maintain a brokerage account database (p.7 ¶.6–8; FIG.2 210); at least one computer coupled to the network and configured to use a plurality of web page templates to service web page requests received over the network (p.7 ¶.4–6; FIG.2 212), wherein the web page templates are configured to implement a real-time account opening process that establishes new brokerage accounts in the brokerage account database and allows for online real-time trading (FIGS. 4–6); at least one computer coupled to the network and configured to execute a principalling process on new brokerage accounts in the brokerage account database (p.11 ¶.3–p.13 ¶.15), wherein the principalling process includes: obtaining an account type selection (p.11 ¶.5–7; FIG.4 402); presenting electronically a list of new brokerage accounts having the selected account type to at least one principal (p.11 ¶.12–13; FIG.4 406); obtaining from the at least one principal an individual status designation for each of the new brokerage accounts listed (p.12 ¶.19–24; FIG.4 408), wherein said designation is indicative of acceptance or non-acceptance of the new brokerage accounts (p.12 ¶.19–24; FIG.4 408); obtaining a password from the at least one principal (p.12 ¶.29–p.13 ¶.2; p.12 ¶.19–24; FIG.4 412, 414); and if the password is valid, updating records of the new brokerage accounts to reflect the individual status designations (p.13 ¶.4–5; p.12 ¶.19–24; FIG.4 416).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Appellants seek review of the following grounds of rejection:

Claims 1-5, 8-14, and 16-18 stand rejected under 35 U.S.C. § 103(a), the Examiner believing them to be unpatentable over Wallace (U.S. 6,968,317 in view of Musmanno (U.S. 6,108,641) in further view of O'Shaughnessy (U.S. 6,484,151).

VII. ARGUMENT

The claims do not stand or fall together. Instead, Appellants present separate arguments for various independent and dependent claims. Each of these arguments is separately argued below and presented with separate headings and sub-headings as required by 37 CFR § 41.37(c)(1)(vii).

Claims 1–5, 8–14, and 16–18 stand rejected under 35 U.S.C. § 103(a). Appellants respectfully traverse because the cited art fails to establish a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. **Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.**

MPEP § 2143.

Specifically, Appellants traverse because the cited art fails to teach or suggest all the claim limitations.

A. Claims 1–5 and 8–14 Are Not Obvious in Light of the Cited References

There are at least two separate and independent reasons that claims 1–5 and 8–14 are not obvious in light of the cited references.

1. There is No Teaching or Suggestion of “Automatically Initiating a Transfer of Funds”

Independent claim 1 recites in part “automatically initiating an online transfer of investment funds to said online brokerage account. Independent claim 8 recites a similar limitation: “wherein the web page templates are configured to implement a real-time account opening process . . . wherein the real-time account opening process includes: . . . automatically initiating a transfer of funds.” On page four of the office action dated August 8, 2006, Examiner

cites Wallace at col.11 ¶.55–62 as teaching this limitation. However, Wallace does not teach or suggest this limitation. The passage relied on and cited by Examiner states:

When the new user's account application is received, at step 603 the system 100 assigns the new user a customer identifier and password so that the user may access the brokerage account on-line. The user is then able to log onto a secure website as a customer. The user can then select the desired electronic application form for the desired account type, such as an individual retirement account (IRA), for which the application is being made.

Logging onto a secure website and selecting an application form does not teach or suggest automatically initiating a transfer of investment funds. Furthermore, assigning a username and password also does not teach or suggest automatically initiating a transfer of investment funds. For at least this reason, independent claims 1 and 8, and dependent claims 2–5 and 9–14, are allowable over the cited art.

2. There is No Teaching or Suggestion of “an Online Transfer of Investment Funds”

Additionally, independent claim 1 recites in part “authorizing an online real-time transfer of investment funds to said online brokerage account.” Independent claim 8 recites a similar limitation: “wherein the web page templates are configured to implement a real-time account opening process . . . wherein the real-time account opening process includes: . . . authorizing . . . a transfer of funds.” On page three of the final office action dated January 24, 2007, Examiner cites Wallace at col.11 ¶.3–16 as teaching this limitation. However, Wallace does not teach or suggest this limitation. The passage relied on and cited by Examiner states:

In an exemplary embodiment, the user must sign and return the new application form with the appropriate funding within a predetermined time, such as 28 days, otherwise the system 100 closes the user's account. It will be appreciated that there are numerous ways in which a user may fund the account, such as by sending a personal check, wiring money from another account, or transferring assets from another account.

Wallace thus teaches three methods of funding: personal check, wiring money from another account, and transferring assets from another account. None of these three methods teaches an online transfer of investment funds as claimed. First, mailing a personal check is not an online transfer and does not teach or suggest an online transfer. Second, wiring money from another account also does not teach or suggest an online transfer. An online transfer is performed by users employing computers and the protocol of the Internet, while wiring money is performed by banks or cash offices. Indeed, online transfers are a comparatively recent phenomenon compared to wiring money, which has existed since at least the nineteenth century. Third, transferring assets from one account to another account does not teach or suggest an online transfer to the brokerage account, as recited in the claim. For at least this reason, independent claims 1 and 8, and dependent claims 2-5 and 9-14, are allowable over the cited art.

B. Claims 8-14 Are Not Obvious in Light of the Cited References

Independent claim 8 recites in part “updating said new record with a buying power greater than zero.” On page four of the office action dated August 8, 2006, Examiner cites Wallace at col.11 l.55-62 as teaching this limitation. However, Wallace does not teach or suggest this limitation. The cited passage states:

When the new user's account application is received, at step 603 the system 100 assigns the new user a customer identifier and password so that the user may access the brokerage account on-line. The user is then able to log onto a secure website as a customer. The user can then select the desired electronic application form for the desired account type, such as an individual retirement account (IRA), for which the application is being made.

Logging onto a secure website and selecting an application form does not teach or suggest updating a record with a buying power greater than zero, nor does receipt of a username and password. It has nothing to do with updating a record with a buying power greater than zero. For

at least this reason, independent claim 8 and dependent claims 9–14 are allowable over the cited art.

C. Claims 16–18 Are Not Obvious in Light of the Cited References

Independent claim 16 recites in part “at least **one computer** coupled to the network and **configured to execute a principalling process** on new brokerage accounts in the brokerage account database, wherein the principalling process includes: obtaining an account type selection; . . . obtaining from the at least one principal an individual status designation for each of the new brokerage accounts listed, wherein said designation is indicative of acceptance or non-acceptance of the new brokerage accounts; **obtaining a password from the at least one principal**; and if the password is valid, updating records of the new brokerage accounts to reflect the individual status designations.” On page 7 of the office action dated August 8, 2006, Examiner cites Wallace at col.13 ¶.24–44; col.15 ¶.25–41; col.9 ¶.57–67; and col.11 ¶.3–16, 55–62 as teaching these limitations. However, Wallace does not teach or suggest these limitations. The cited passages relied on by Examiner explain that a review process is necessary, but do not teach or suggest a computer configured to execute a principalling process. Furthermore, the cited passages do not teach or suggest the claim limitations detailing how the principalling process should be conducted. Rather, the cited passages merely state that an application can either be approved or disapproved. Finally, in Wallace the password system of the last cited passage (col.11 ¶.55–62) is for the customer. However, the claim recites obtaining a password from the principal, not the customer. Hence, the cited passage does not teach or suggest this element of the claim either. For at least these reasons, independent claim 16 and dependent claims 17–18 are allowable over the cited art.

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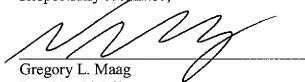
D. Conclusion

For the reasons stated above, Appellants respectfully submit that the rejections should be reversed. Appellants believe that they have complied with each requirement for an appeal brief. If any member of the Board of Appeals has any questions or otherwise feels it would be advantageous, he or she is encouraged to telephone the undersigned at (713) 238-8040.

In the course of the foregoing discussions, Appellants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the prior art which have yet to be raised, but which may be raised in the future.

If any fees are inadvertently omitted or if any additional fees are required or have been overpaid, please appropriately charge or credit those fees to Conley Rose, P.C. Deposit Account Number 03-2769.

Respectfully submitted,



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VIII. CLAIMS APPENDIX

1. (Currently Amended) A method of securing an ownership interest in a publicly traded corporation, wherein the method comprises:

- receiving a request to open a brokerage account;
- remotely providing account application information to an online brokerage;
- electronically signing an account agreement authorizing the establishment of an online brokerage account with said online brokerage;
- opening said online brokerage account;
- authorizing an online real-time transfer of investment funds to said online brokerage account;
- automatically initiating an online transfer of investment funds to said online brokerage account;
- using said online brokerage account to place an online real-time trading order using an abbreviation associated with said publicly traded corporation; and
- using said online brokerage account to complete an online real-time trading order.

2. (Previously presented) The method of claim 1, wherein the real-time transfer of funds that has been authorized is an automated clearing house (ACH) transfer from a checking account.

3. (Previously presented) The method of claim 1, wherein the real-time transfer of funds that has been authorized is a credit card charge.

4. (Original) The method of claim 1, wherein said electronically signing includes:
possessing authority to contract on behalf of a named individual; and
selecting an agreement indicator displayed adjacent to the account agreement, wherein the account agreement specifies said named individual.

5. (Original) The method of claim 4, wherein said agreement indicator is one of a plurality of indicators displayed adjacent to said account agreement, wherein the plurality of indicators includes a selectable disagreement indicator.

6.-7. (Canceled).

8. (Currently Amended) An online trading system that comprises:

at least one computer coupled to a network and configured to maintain a brokerage account database; and

at least one computer coupled to the network and configured to use a plurality of web page templates to service web page requests received over the network,

wherein the web page templates are configured to implement a real-time account opening process that establishes new brokerage accounts in the brokerage account database, wherein the real-time account opening process includes:

receiving a request to open a brokerage account;

obtaining contact information online;

creating a new record in the brokerage account database reflecting said contact information;

obtaining brokerage account application information;

updating said new record in accordance with said brokerage account application information;

displaying a brokerage account contract;

securing online agreement to said brokerage account contract;

opening said brokerage account;

obtaining funding information relating to a financial account;

authorizing and automatically initiating a transfer of funds from said financial account into said brokerage account; updating said new record with a buying power greater than zero;

using said brokerage account to place an online real-time trading order using an abbreviation associated with said publicly traded corporation; and

using said brokerage account to complete an online real-time trading order.

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9. (Original) The system of claim 8, wherein the real-time account opening process further includes:

displaying a confirmation page indicating successful completion of the real-time account opening process.

10. (Original) The system of claim 8, wherein the financial account is a checking account.

11. (Original) The system of claim 8, wherein the financial account is a credit card account.

12. (Previously presented) The system of claim 8, wherein said securing is accomplished by an electronic signature.

13. (Original) The system of claim 12, wherein said electronic signature consists of selection by an individual of an option labeled "I Agree" and displayed in proximity to said brokerage account contract and in proximity to a name of said individual.

14. (Previously presented) The system of claim 8, wherein the web page templates are further configured to implement a trading order placement process.

15. (Canceled).

16. (Currently Amended). An online trading system that comprises:

at least one computer coupled to a network and configured to maintain a brokerage account database;

at least one computer coupled to the network and configured to use a plurality of web page templates to service web page requests received over the network, wherein the web page templates are configured to implement a real-time account opening process that establishes new brokerage accounts in the brokerage account database and allows for online real-time trading;

at least one computer coupled to the network and configured to execute a principalling process on new brokerage accounts in the brokerage account database, wherein the principalling process includes:

- obtaining an account type selection;
- presenting electronically a list of new brokerage accounts having the selected account type to at least one principal;
- obtaining from the at least one principal an individual status designation for each of the new brokerage accounts listed, wherein said designation is indicative of acceptance or non-acceptance of the new brokerage accounts;
- obtaining a password from the at least one principal; and
- if the password is valid, updating records of the new brokerage accounts to reflect the individual status designations.

17. (Original) The system of claim 16, wherein the principalling process further includes:
storing application information of accepted new brokerage accounts on archival media.

18. (Original) The system of claim 16, further comprising:
at least one computer coupled to the network and configured to execute a fraud checking process on new brokerage accounts in the brokerage account database.

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IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.